

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

FILED

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In the Matter of the Application of)
)
KAUAI ISLAND UTILITY COOPERATIVE)
)
For Waiver or Exemption, Pursuant to Hawaii)
Revised Statutes, Section 269-31(b), With)
Respect to the CFC CWP Loan and the)
CoBank CWP Loan.)
_____)

PUBLIC UTILITIES
COMMISSION
Docket No. **2017-0371**

APPLICATION
EXHIBITS 1 THROUGH 5
VERIFICATION
and
CERTIFICATE OF SERVICE

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KAUAI ISLAND UTILITY COOPERATIVE

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APPLICATION

KAUAI ISLAND UTILITY COOPERATIVE ("Applicant" or "KIUC"), by and through its attorneys, Morihara Lau & Fong LLP, hereby submits this application ("Application")¹ respectfully requesting that the Hawaii Public Utilities Commission ("Commission") issue a decision and order:

(1) Waiving or exempting KIUC, as an electric cooperative and pursuant to Hawaii Revised Statutes ("HRS") § 269-31(b), from any requirement that KIUC obtain Commission approval to enter into and effectuate the "CFC CWP Loan" and the "CoBank CWP Loan" as described herein;² and

¹ Consistent with the requirements set forth in Hawaii Administrative Rules ("HAR") § 6-61-18, concurrent with the filing of this Application, KIUC will serve two (2) copies of this Application on the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs ("Consumer Advocate"), an *ex officio* party to this proceeding pursuant to HAR § 6-61-62.

² The "CFC CWP Loan" and "CoBank CWP Loan" are described in Section II.B below and in Exhibit 1 and Exhibit 2 attached hereto, respectively. Portions of Exhibit 2 have been redacted as confidential subject to the terms of a Protective Order to be issued in the subject docket. Subsequent to filing this Application, KIUC will request that the Commission issue a Protective Order in this docket. Once the Commission issues a Protective Order for this docket, all confidential pages will be filed pursuant and subject to the terms of that Protective Order.

(2) Granting such other relief as may be deemed required, applicable, or otherwise appropriate, just, and reasonable under the circumstances in order to allow KIUC to enter into and effectuate the CFC CWP Loan and the CoBank CWP Loan.³

I. GENERAL INFORMATION

I.A. Applicant

Applicant's full name and principal business address are as follows:

Kauai Island Utility Cooperative
4463 Pahee Street, Suite 1
Lihue, Hawaii 96766-2000

I.B. Communications Regarding this Application

Pleadings, correspondence, notices, and other communications regarding this Application should be directed to:

KENT D. MORIHARA, ESQ.
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I.C. Description and Background of Applicant

KIUC, a Hawaii not-for-profit electric cooperative, is an operating public utility engaged in the production, transmission, distribution, purchase, and sale of electric

³ As discussed in Section IV below, KIUC asserts that under the circumstances, the Commission's grant of the requested waiver or exemption to KIUC is reasonable, appropriate, and would serve the public interest. However, in the event the Commission determines not to grant the requested waiver or exemption, then in the alternative, KIUC requests that the Commission, for the same reasons discussed herein: (a) approve and authorize KIUC to enter into and effectuate the CFC CWP Loan and the CoBank CWP Loan, pursuant to HRS §§ 269-17, 269-19, and/or 269-7, and HAR Title 6, Chapter 61, Subchapters 2, 6, 9, and/or 10, all to the extent applicable, and (b) grant such other relief as may be deemed required, applicable, or otherwise appropriate, just, and reasonable under the circumstances in order to allow KIUC to enter into and effectuate the CFC CWP Loan and the CoBank CWP Loan.

energy on the island of Kauai, State of Hawaii. KIUC has been an operating public utility since November 1, 2002, when it purchased substantially all of the assets and assumed the operations of the Kauai Electric division of Citizens Communications Company ("Citizens"), and in connection therewith, was assigned the legislatively-granted franchise⁴ previously held by Citizens to manufacture, sell, furnish, and supply electric light, current, and power on the island of Kauai. Said transaction was approved by the Commission in Decision and Order No. 19658, issued on September 17, 2002, as amended by Decision and Order No. 19755, issued on October 30, 2002, both in Docket No. 02-0060.

KIUC is duly incorporated, validly existing, and in good standing under the laws of the State of Hawaii.

II. BACKGROUND OF 2013 AMENDMENTS TO HRS § 269-31 AND OVERVIEW OF CFC CWP LOAN AND COBANK CWP LOAN

II.A. Background of 2013 Amendments to HRS § 269-31

Pursuant to Act 57, Session Laws of Hawaii 2013 ("Act 57"), which amended HRS § 269-31,⁵ the Commission was given the authority to waive or exempt an electric

⁴ KIUC's legislatively-granted franchise reads as provided in Act 165 (Session Laws of Hawaii 1967).

⁵ Act 57 amended HRS § 269-31 by adding new subparagraphs (b) and (c), which read as follows:

(b) Notwithstanding any provision of this chapter or any franchise, charter, law, decision, order, or rule to the contrary, the public utilities commission, sua sponte or upon the application of an electric cooperative, may waive or exempt an electric cooperative from any or all requirements of this chapter or any applicable franchise, charter, decision, order, rule, or other law upon a determination or demonstration that such requirement or requirements should not be applied to an electric cooperative or are otherwise unjust, unreasonable, or not in the public interest. Notwithstanding the above, the public utilities commission and the consumer advocate shall at all times consider the ownership structure and interests of an electric cooperative in determining the scope and need for any regulatory oversight or requirements over such electric cooperative. To the extent any other provision of this chapter [(i.e., HRS Chapter 269)] or any franchise,

cooperative from any or all requirements of HRS Chapter 269 or any applicable franchise, charter, decision, order, rule, or other law, upon a determination or demonstration that the requirement(s) should not be applied to an electric cooperative or are otherwise unjust, unreasonable, or not in the public interest.

In enacting Act 57, the legislature recognized that Hawaii's public utilities regulation laws (e.g., HRS Chapter 269) are largely aimed at attempting to "balance the tension between an investor-owned utility's profit motive and the interest of its customer."⁶ Recognizing that an electric cooperative is a not-for-profit, customer-owned organization, and as such, this tension does not exist in the cooperative model, the legislature determined that the differences between an electric cooperative and an investor-owned utility must be recognized. In doing so, rather than enact a separate utilities law to govern electric cooperatives, the legislature enacted Act 57.

charter, law, decision, order, or rule is contrary to or otherwise conflicts with this section in any manner, the provisions of this section shall govern and apply.

(c) For purposes of this chapter [(i.e., HRS Chapter 269)], an "electric cooperative" is a cooperative association or entity that is:

- (1) Owned by its members;
- (2) Formed pursuant to [HRS] chapter 421C;
- (3) Operated on a not-for-profit basis;
- (4) Authorized pursuant to a legislatively granted franchise or other legislative authority to manufacture, sell, furnish, and supply electric light, electric current, or electric power to its members or a designated service area; and
- (5) Governed by a board of directors who are members of the electric cooperative and who are democratically elected by members of the electric cooperative pursuant to applicable bylaws.

⁶ Act 57, § 1.

Through Act 57, the legislature requires that the Commission and the Consumer Advocate “shall at all times consider the ownership structure and interests of an electric cooperative in determining the scope and need for any regulatory oversight or requirements over such electric cooperative.”⁷ The legislature also found that the Commission should be given “the flexibility and discretion to determine the applicability of existing regulatory requirements to electric cooperatives in furtherance of the public interest.”⁸ To provide the Commission with this flexibility, the legislature granted the Commission the power and authority to waive or exempt an electric cooperative from any or all laws or requirements upon a determination or demonstration that they “should not be applied to an electric cooperative or are otherwise unjust, unreasonable, or not in the public interest.”⁹

In determining whether to exercise its authority to waive or exempt an electric cooperative from a requirement, certain factors as specifically noted in Act 57 should be considered, including without limitation: (1) the ownership structure and interests of the electric cooperative, including the differences between an electric cooperative and the tensions inherent for investor-owned utilities; and (2) the scope and need for the regulatory oversight/requirement under the circumstances.

II.B. Overview of CFC CWP Loan and CoBank CWP Loan

1. Why KIUC Needs the CFC CWP Loan and the CoBank CWP Loan

As the Commission is aware, KIUC has obtained various approvals from the Commission (and more recently, waivers from the Commission under HRS § 269-31(b),

⁷ See supra, n.5.

⁸ Act 57, § 1.

⁹ Id. at §§ 1 and 2. See also supra, n.5.

or confirmation that Commission approval is not required) for various financing arrangements with KIUC's existing lenders: (i) United States of America, acting by and through the Administrator of the Rural Utilities Service ("RUS"),¹⁰ (ii) National Rural Utilities Cooperative Finance Corporation ("CFC"),¹¹ and (iii) CoBank, ACB ("CoBank").^{12 13}

¹⁰ RUS is an agency of the United States Department of Agriculture that was created to, among other things, assist rural America in financing electric projects in order to carry out the rural electrification program established under the Rural Electrification Act of 1936. For further information and background regarding RUS, see Attachment 1 to KIUC's Application filed on June 1, 2011 in Docket No. 2011-0128, which describes the financing alternatives available to KIUC. Attachment 2 to KIUC's Application filed on June 1, 2011 in Docket No. 2011-0128 provides general information on the history, purpose, and structure of RUS and describes in detail the lengthy, rigorous review process that RUS requires electric cooperatives such as KIUC to go through in order to obtain a loan from RUS.

¹¹ CFC was created in 1969 as a member owned, non-profit, cooperative financial institution to serve as a co-lender to RUS for electric and telephone cooperatives. CFC is a private financial institution which funds its loans through the sale of commercial paper, secured bonds, syndicated bank credit facilities, and member capital. CFC has publicly traded bonds and files quarterly and annual statements with the Securities and Exchange Commission on Forms 10(Q) and 10(K). CFC has a loan portfolio of approximately \$24.3 billion (comprised of approximately \$23.9 billion lent to electric cooperatives and \$0.4 billion lent to telephone cooperatives). CFC is based in Dulles, Virginia and provides a wide array of financial products to more than 1,500 cooperative member-owners. CFC is rated by all three of the major ratings agencies, and its bonds carry an A rating by Standard & Poor's.

¹² CoBank is an agency within the Farm Credit system (a system created by the Farm Credit Act of 1971), which is a network of banks and retail financial institutions chartered to support the borrowing needs of U.S. agriculture and the rural economy. CoBank is empowered by Congress to raise capital as a government sponsored entity and lend to agriculture and utility cooperatives, private companies, and other entities. CoBank has a loan portfolio of approximately \$94.9 billion, of which approximately \$20.6 billion is lent to electric cooperatives and independent power producers through the rural infrastructure portfolio.

¹³ See, e.g., (1) Decision and Order No. 19658, issued on September 17, 2002, as amended by Decision and Order No. 19755, issued on October 30, 2002, both in Docket No. 02-0060 (approving, among other things, a \$215 million loan from RUS to acquire Kauai Electric's assets, a \$25 million line of credit from CFC for working capital purposes, and a \$60 million disaster recovery line of credit from CFC, all secured through a first mortgage lien and security interest on all assets and revenues of KIUC); (2) Decision and Order No. 20691, issued on November 26, 2003, as amended by Order No. 20708, issued on December 5, 2003, both in Docket No. 03-0223 (approving, among other things, \$41.2 million in financing from RUS and/or CFC, secured by RUS and/or CFC taking a mortgage and security interest in the real and personal property of KIUC, to fund KIUC's acquisition of the Kapaia Power Partners facility (now known as Kapaia Power Station)); (3) Decision and Order, issued on April 6, 2011, in Docket No. 2010-0277 (approving the restructuring or conversion of the \$25 million line of credit from CFC that was approved in Docket No. 02-0060 by (a) reducing the principal amount of the existing line of credit from \$25 million to \$5 million, and (b) transferring the remaining \$20 million to a 3-year term revolving line of credit to be used for capital projects, both secured by a first mortgage lien and security interest on KIUC's assets and revenue); (4) Decision and Order, issued on August 25, 2011, in Docket No. 2011-0128 (approving \$41,968,000 in financing from RUS to fund various CWP expenditures,

KIUC's current Construction Work Plan ("CWP")¹⁴ requires financing in the amount of \$95,115,000 (for CWP projects not yet completed). KIUC's long-term financing for essentially all of KIUC's CWP investments has been obtained through loans from RUS.¹⁵ In fact, the Commission has already authorized KIUC to obtain \$60,712,000 (out of the total \$95,115,000 needed) of RUS financing for KIUC's current, RUS-approved CWP (the "RUS CWP Loan").¹⁶ As explained further below, because KIUC cannot obtain all of its CWP financing from RUS, KIUC is seeking supplemental and/or replacement CWP funding via the CFC CWP Loan and the CoBank CWP Loan.

KIUC must be able to timely obtain financing when and as needed to fund its CWP capital expenditures, but, as previously mentioned, KIUC cannot obtain all of its

including the pledge of KIUC's real and personal property to secure said financing); (5) Decision and Order No. 32237, issued on August 4, 2014, in Docket No. 2014-0041 (approving the extension of the term of the \$20 million secured line of credit approved in Docket No. 2010-0277 from November 14, 2014 to September 30, 2015); (6) Decision and Order No. 32459, issued on November 18, 2014, in Docket No. 2014-0117 (granting KIUC a waiver from any requirement that KIUC obtain Commission approval to enter into and effectuate a \$42,579,000 loan with RUS, secured by KIUC's real and personal property, to pay off a construction bridge loan and to reimburse KIUC for completed projects included in its CWP); (7) Decision and Order No. 33093, issued on September 1, 2015, in Docket No. 2015-0180 (approving an additional extension of the term of the \$20 million secured line of credit approved in Docket No. 2010-0277 from September 30, 2015 to September 30, 2020); (8) Decision and Order No. 33706, issued on May 17, 2016, in Docket No. 2016-0092 (declaring that HRS §§ 269-17 and 269-19(a) do not apply to KIUC's twelve-month unsecured line of credit from CoBank); (9) Decision and Order No. 33743, issued on June 6, 2016, in Docket No. 2016-0091 (granting KIUC a waiver from any requirement that KIUC obtain Commission approval to enter into and consummate a refinancing of the remaining balance of the RUS loan approved in Docket No. 02-0060, secured by a first mortgage lien and security interest on KIUC's assets and revenue); and (10) Decision and Order No. 34390, issued on February 13, 2017, in Docket No. 2016-0394 (granting KIUC a waiver from any requirement that KIUC obtain Commission approval to enter into and effectuate a \$60,712,000 loan with RUS, secured by KIUC's real and personal property, to reimburse KIUC for completed projects included in KIUC's 2016-2019 CWP).

¹⁴ Generally, the CWP sets forth KIUC's construction needs that are most feasible, environmentally acceptable, and economical for the upcoming 2-4 year period and represent least life cycle cost. The CWP, its purpose, the process of developing a CWP, and RUS's rigorous review as part of the loan approval process, are all described in detail in Docket No. 2011-0128. See, e.g., Application, filed on June 1, 2011, in Docket No. 2011-0128, at Attachment 2, pages 10-11 and 15-21.

¹⁵ See supra n.13.

¹⁶ Decision and Order No. 34390, issued on February 13, 2017, in Docket No. 2016-0394 (granting KIUC a waiver from any requirement that KIUC obtain Commission approval to enter into and effectuate a \$60,712,000 loan with RUS, secured by KIUC's real and personal property, to reimburse KIUC for completed projects included in KIUC's 2016-2019 CWP).

required CWP financing from RUS. Although KIUC prefers to obtain CWP financing from RUS because of RUS's historically lowest cost financing, increasing RUS lending restraints and limitations have recently impaired, and have the potential to progressively impair, KIUC's ability to access RUS funds to execute its strategic plans and requirements, forcing KIUC to look to other third party lenders, such as CFC and CoBank, for supplemental and/or replacement financing. Examples of RUS lending restraints or limitations that have recently impacted KIUC or may in the future impact KIUC are:

- Under RUS's environmental standards, RUS will not fund a category of projects (even though included in an approved CWP) known as category 3 exclusion projects. For KIUC, these projects are by and large related to endangered seabird mitigation, which essentially disallows the use of RUS financing to perform even routine CWP projects involving overhead power lines. With respect to KIUC's current CWP, this interpretation means that at least \$49,519,000 of CWP projects cannot be funded through RUS, and KIUC must obtain that \$49,519,000 of funding elsewhere.
- RUS's environmental standards are also stringent with respect to the timing of the start of a construction project as compared to when the environmental report for such project is approved. If the relative timing of these two events does not conform to RUS's stringent standards, then RUS would not authorize KIUC to be reimbursed for such project(s) from the RUS CWP Loan, and KIUC would need to obtain long-term financing for such project(s) from another lender.

- RUS is subject to Federal government-wide and RUS-specific budget and appropriation uncertainty on an annual basis, which brings uncertainty as to the amount of funding RUS will have available to lend to cooperatives, such as KIUC, on a year-to-year basis.
- Whether due to reduced staffing, budget constraints, or other reasons, RUS processes are becoming increasingly lengthy and could, in the future, be untenable if, for example, KIUC were to need, but be unable to obtain from RUS, prompt reimbursement of CWP expenditures for liquidity purposes. There are already two examples of KIUC being impacted by protracted RUS processes:
 - The Commission authorized KIUC to obtain the RUS CWP Loan on February 13, 2017.¹⁷ KIUC had requested that the Commission issue its decision and order regarding the RUS CWP Loan by no later than March 17, 2017, in anticipation of being able to close the RUS CWP Loan during March or April of 2017. Based on KIUC's past experiences as an RUS borrower, KIUC believed that a March or April 2017 closing was a realistic expectation. However, KIUC has not yet been able to close on the RUS CWP Loan, as KIUC is still waiting to receive the loan documentation from RUS. RUS generates these documents in-house, and the availability of RUS legal staff to produce these documents is outside of the control of KIUC and dependent on other RUS priorities. As a result, KIUC

¹⁷ See supra n.16.

has neither control of this process nor any ability to project when those legal documents may be available.

- As an RUS-regulated borrower (that does not currently have an indenture in place¹⁸), in order to obtain the CFC CWP Loan and the CoBank CWP Loan, KIUC had to first obtain a lien accommodation from RUS. The lien accommodation (attached hereto as Exhibit 3) authorizes KIUC, as an RUS-regulated-borrower, to obtain secured CWP financing from CFC and/or CoBank (i.e., the CFC CWP Loan and the CoBank CWP Loan) and to include such financing under KIUC's "Existing Mortgage".¹⁹ KIUC made the lien accommodation request in recognition that the policies and procedures at RUS for such requests have changed over the last 10 years. Originally, at the time of the request, KIUC estimated (based on the length of time it has taken other RUS borrowers to obtain lien accommodations in the past) that the RUS lien accommodation process would take less than six months. However it took approximately 1.5 years for KIUC to obtain RUS approval of the lien accommodation. Despite RUS assurances that KIUC's request was a high priority, the process was extended to the point that

¹⁸ See Petition for Declaratory Ruling, filed on September 29, 2017, in Docket No. 2017-0346 ("Petition") (requesting a declaratory ruling that Commission approval is not required for KIUC to enter into and consummate the proposed "Indenture Arrangement", as defined therein).

¹⁹ KIUC's "Existing Mortgage" is the instrument that currently secures all of KIUC's existing secured financing. See supra n.13. KIUC is in the process of replacing KIUC's Existing Mortgage with the Indenture Arrangement. The CFC CWP Loan and the CoBank CWP Loan will close under the security documents existing at the time these loans are consummated (i.e., either the Existing Mortgage or the Indenture Arrangement, depending upon, for example, the outcome of the Petition and timing of any subsequent replacement of the Existing Mortgage with the Indenture Arrangement).

KIUC was concerned about its liquidity in the future and ability to fund its future construction needs on a timely basis, if access to long-term debt is delayed for years. This experience was one of the reasons that KIUC has proposed a change in the lending structure to move to an indenture process.²⁰

2. Range of Supplemental and/or Replacement CWP Funding Needed

As mentioned above, KIUC's CWP requires financing in the amount of \$95,115,000. Both the Commission and RUS have approved the RUS CWP Loan in the amount of \$60,712,000.²¹ From this amount, \$15,116,000 is already designated for general fund reimbursement,²² leaving only \$45,596,000²³ of the RUS CWP Loan available for KIUC to use to fund its CWP projects. Consequently, KIUC currently requires \$49,519,000²⁴ in *supplemental* CWP financing.

KIUC's preference and intent is to maximize its use of low-cost RUS funds, all other factors remaining constant, under the RUS CWP Loan (i.e., to use all of the remaining \$45,596,000 of the RUS CWP Loan and then, as discussed above, fund the remainder of KIUC's CWP with \$49,519,000 of supplemental CWP financing). However, as previously mentioned in Section II.B.1 above, for certain types of CWP projects that involve environmental reports, if the relative timing of commencement of construction

²⁰ See *supra* nn.18 & 19.

²¹ See *supra* n.16.

²² The \$15,116,000 of general fund reimbursement is comprised of approximately \$14.3 million for reimbursement of already completed distribution projects and approximately \$800,000 for reimbursement of already completed transmission projects.

²³ \$60,712,000 - \$15,116,000 = \$45,596,000.

²⁴ \$95,115,000 - \$45,596,000 = \$49,519,000. As discussed in Section II.B.1 above, RUS will not fund \$49,519,000 of KIUC's CWP projects that are category 3 exclusion projects (projects related to endangered seabird mitigation).

and approval of the environmental report does not conform to RUS's stringent standards, then RUS will not authorize KIUC to be reimbursed for such project(s) from the RUS CWP Loan and KIUC would need to obtain long-term financing for such project(s) from another lender. Additionally, as also discussed above, RUS is subject to annual budget/funding uncertainty and RUS processes are becoming increasingly protracted. Because of this, depending upon events not currently ascertainable (e.g., timing of future construction, timing of future environmental approvals, RUS's future budget/funding levels, length of future RUS processes), it is prudent for KIUC to secure *replacement* CWP financing to cover up to the whole of the \$45,596,000 of the RUS CWP Loan available, in case KIUC is unable to, or unable to reasonably, access those funds.

In sum, the RUS CWP Loan will fund KIUC's CWP within a range from \$0 to \$45,596,000, and the CFC CWP Loan and/or the CoBank CWP Loan will fund KIUC's CWP within a range from \$49,519,000 to \$95,115,000. The minimum \$49,519,000 of the CFC CWP Loan and/or CoBank CWP Loan is intended as supplemental CWP financing to the \$45,596,000 of the RUS CWP Loan available. The additional \$45,596,000 of the CFC CWP Loan and/or the CoBank CWP Loan overlaps with the \$45,596,000 of the RUS CWP Loan available because it is intended to potentially replace up to the whole of the RUS CWP Loan available for the reasons discussed in the paragraph immediately above. To address KIUC's definite need for at least \$49,519,000 of supplemental CWP financing, as well as KIUC's potential need for up to \$45,596,000 of replacement CWP financing, KIUC has obtained commitments from CFC and CoBank for each to provide up to \$95,115,000 of long-term CWP financing.

3. Description of the CFC CWP Loan and the CoBank CWP Loan

As noted above, the CFC CWP Loan and the CoBank CWP Loan serve as both supplemental and potential replacement financing to the RUS CWP Loan, depending on how much the RUS CWP Loan will fund KIUC's CWP. The more that the RUS CWP Loan funds, the less the CFC CWP Loan and the CoBank CWP Loan will have to fund, and vice versa.

The term sheets for the CFC CWP Loan and the CoBank CWP Loan are attached hereto as Exhibit 1 and Exhibit 2, respectively. The salient terms of the loans are as reflected in these term sheets and certain key terms or terms unique to this financing arrangement are summarized below:

Principal Amounts and Reductions to Principal Amounts Available. The maximum principal amount for either loan is \$95,115,000, less the aggregate principal amount borrowed from any other lenders (i.e., either RUS and CFC, or RUS and CoBank, as the case may be) to fund for the same purpose (i.e., to fund KIUC's CWP projects). In other words, the CFC CWP Loan and the CoBank CWP Loan individually and collectively have a cap principal amount of \$95,115,000. Each withdrawal from the RUS CWP Loan, CFC CWP Loan, or CoBank CWP Loan will reduce the principal amounts available under the CFC CWP Loan and CoBank CWP Loan by the amount of KIUC's withdrawal.

Terms/Maturity Dates. Under the CFC CWP Loan, KIUC may draw funds for 5 years, with each advance amortizing for up to 35 years, resulting in a loan term of up to 40 years. Under the CoBank CWP Loan, KIUC may draw funds anytime through 2022 and the loan will mature up to 30 years thereafter.

Interest Rates. The interest rate for each withdrawal will be that which is effective at the time of the withdrawal for the corresponding loan.²⁵ This is further discussed below.

Bid Out Process. The funding will be drawn as needed, with KIUC bidding out each draw. Each time KIUC needs to draw funds, KIUC will seek qualified bids from CFC and CoBank. KIUC will choose to withdraw from the loan of the qualified bidder that offers the best value to KIUC's member consumers, the lower interest rate, or other terms that would have a material impact on such decision.

Security. Both loans will be secured under the terms of the Existing Mortgage.²⁶

III. SUMMARY OF REQUESTED RELIEF AND STANDARD OF REVIEW

III.A. Requested Relief

By this Application, KIUC seeks a waiver or exemption, as an electric cooperative and pursuant to HRS § 269-31(b), from any requirement that KIUC obtain approval from the Commission in order to enter into and effectuate the CFC CWP Loan and the CoBank CWP Loan to fund KIUC's CWP.

²⁵ For example, indicative interest rates that would apply to the CFC CWP Loan and the CoBank CWP Loan as of October 16, 2017, are provided in Exhibit 4 and Exhibit 5 attached hereto, respectively. Portions of Exhibit 4 and Exhibit 5 have been redacted as confidential subject to the terms of a Protective Order to be issued in the subject docket. See supra n.2.

²⁶ As indicated in footnote 19 above, the CFC CWP Loan and the CoBank CWP Loan will close under the security documents existing at the time these loans are consummated (i.e., either the Existing Mortgage or the Indenture Arrangement, depending upon, for example, the outcome of the Petition and timing of any subsequent replacement of the Existing Mortgage with the Indenture Arrangement). If the CFC CWP Loan and the CoBank CWP Loan close under the Existing Mortgage, CoBank will be added, as a mortgagee, to the Existing Mortgage.

III.B. Standard of Review

Under HRS § 269-31(b), the Commission, either *sua sponte* or upon the application of an electric cooperative, is authorized to:

waive or exempt an electric cooperative from any or all requirements of this chapter [(i.e., HRS Chapter 269)] or any applicable franchise, charter, decision, order, rule, or other law upon a determination or demonstration that such requirement or requirements should not be applied to an electric cooperative or are otherwise unjust, unreasonable, or not in the public interest.

HRS § 269-31(b) further requires that the Commission and the Consumer Advocate “shall at all times consider the ownership structure and interests of an electric cooperative in determining the scope and need for any regulatory oversight or requirements over such electric cooperative.”

IV. JUSTIFICATION FOR WAIVER OR EXEMPTION

Pursuant to HRS § 269-31(b), KIUC respectfully requests that the Commission grant KIUC a waiver or exemption from any requirement that KIUC obtain approval from the Commission in order to enter into and effectuate the CFC CWP Loan and the CoBank CWP Loan. KIUC contends that such a waiver or exemption in this situation is reasonable, appropriate, and would serve the public interest, for the following reasons:

(1) As an electric cooperative, KIUC’s ownership structure and interests are not subject to the need to balance shareholders’ concerns of profitability and customers’ concerns of service, thus, this cooperative ownership structure mitigates the need for regulatory oversight;

(2) The CFC CWP Loan and the CoBank CWP Loan will not encumber any of KIUC's property that is not already encumbered under KIUC's Existing Mortgage;²⁷

(3) The CFC CWP Loan and the CoBank CWP Loan will allow KIUC to obtain RUS financing (which historically has the lowest cost of financing) when available, but also obtain supplemental and/or replacement financing from CFC and/or CoBank without unnecessary delay;

(4) The CFC CWP Loan and the CoBank CWP Loan will enable KIUC to make the capital expenditures that are: (a) necessary to carry out KIUC's CWP, which sets forth the plant additions required for the development of the KIUC electric system, and (b) consistent with KIUC's 2016-2030 Strategic Plan, which calls for KIUC to, by 2030, generate at least 70% of electricity by using renewable resources;

(5) CFC and CoBank are already existing lenders of KIUC;²⁸

(6) As discussed in Docket No. 2011-0128, CFC and CoBank are common lenders for electric cooperatives such as KIUC;²⁹ and

(7) Granting a waiver or exemption in this situation is consistent with previous Commission orders. For example, in Docket No. 2014-0117,³⁰ Docket No. 2016-0091,³¹

²⁷ Id.

²⁸ See supra n.13.

²⁹ See Application filed on June 1, 2011 in Docket No. 2011-0128, at Attachment 1, pages 2-4.

³⁰ In Docket No. 2014-0117, the Consumer Advocate recommended approval of, and the Commission approved and granted, a waiver from any requirement that KIUC obtain approval from the Commission in order to enter into and effectuate a \$42,579,000 loan from RUS. Division of Consumer Advocacy's Statement of Position, filed on August 25, 2014, in Docket No. 2014-0117, at 4-8; Decision and Order No. 32459, issued on November 18, 2014, in Docket No. 2014-0117, at 1 and 15-19.

³¹ In Decision and Order No. 33743, issued on June 6, 2016, in Docket No. 2016-0091, the Commission granted KIUC a waiver from any requirement that KIUC obtain approval from the Commission in order to enter into and consummate, with CFC, KIUC's proposed refinancing of the

and Docket No. 2016-0394³² the Commission granted waivers to KIUC with respect to financing approvals.

In light of the above, KIUC contends that, under the circumstances, KIUC and its customers and members should not be subjected to the typical, rigorous regulatory review process that normally occurs for a regulated public utility to consummate a financing arrangement, especially in this case, where the proposed indebtedness will be used to fund KIUC's RUS-approved CWP. Given the scope and extent of review that KIUC must go through with RUS in order to obtain RUS's approval of KIUC's CWP, as well as the review the Commission and the Consumer Advocate have already performed in reviewing and either approving or granting a waiver from approvals for KIUC's other financings,³³ KIUC believes that a waiver or exemption is appropriate under these circumstances.

In other words, for the reasons set forth above, KIUC believes that with respect to the CFC CWP Loan and the CoBank CWP Loan, it would be unjust, unreasonable, and not in the public interest or in the interest of KIUC and its customer and members, for KIUC to expend the time and resources and to incur the costs that are usually associated with a typical regulatory approval process. KIUC believes that it similarly would be unnecessary, unreasonable, and not in the public interest for the Commission and its staff and the Consumer Advocate and its staff to expend their respective limited time and resources to proceed through a typical regulatory approval process in this

remaining balance (i.e., up to approximately \$133 million) of KIUC's then-existing term loan from RUS. The Commission granted the waiver upon the finding that the waiver was in the public interest and should be granted.

³² See supra n.16.

³³ See supra n.13.

case. Under these circumstances, KIUC contends that a waiver or exemption is in the public interest and should be granted by the Commission.

V. SUMMARY AND CONCLUSION

In sum, Applicant asserts that, under the circumstances, the Commission's grant of KIUC's requested waiver or exemption would serve the public interest. For the reasons stated above, Applicant respectfully requests that the Commission issue a decision and order:

- (1) Waiving or exempting KIUC, as an electric cooperative and pursuant to HRS § 269-31(b), from any requirement to obtain approval from the Commission in order to enter into and effectuate the CFC CWP Loan and the CoBank CWP Loan; and
- (2) Granting such other relief as may be deemed required, applicable, or otherwise appropriate, just, and reasonable under the circumstances in order to allow KIUC to enter into and effectuate the CFC CWP Loan and the CoBank CWP Loan.³⁴

DATED: Honolulu, Hawaii, October 24, 2017.



KENT D. MORIHARA
KRIS N. NAKAGAWA
LAUREN M. IMADA

Morihara Lau & Fong LLP
Attorneys for KAUAI ISLAND UTILITY
COOPERATIVE

³⁴ See supra n.3.

EXHIBIT 1



**National Rural Utilities
Cooperative Finance Corporation**
Created and Owned by America's Electric Cooperative Network

20701 Cooperative Way
Dulles, Virginia 20166
703-467-1800 | www.nrucfc.coop

Kaua'i Island Utility Cooperative (the "Borrower")

Summary of Terms and Conditions Term Loan for Eligible Work Plan Additions

For Discussion Purposes Only – Not a Commitment to Lend

Lender	National Rural Utilities Cooperative Finance Corporation ("CFC")
Purpose	Electric work plan construction.
Amount	\$95,115,000 (This commitment to be reduced by any loans from other lenders for the same work plan items.).
Loan Term	Forty years – up to five years to draw funds; each advance may amortize up to 35 years.
Amortization	Loan may be amortized using either level debt service or level principal payments in accordance with a loan structure mutually agreed upon by CFC and the Borrower.
Loan Draw	As needed
Security	Secured under the Borrower's Restated Purchase Money Mortgage and Security Agreement, dated as of July 1, 2011, as amended, as may be replaced by the Indenture.
Interest Rate	CFC's interest rates in effect on the date of advance will apply, and the Borrower may select a fixed rate using a term not to exceed the life of the loan.
Interest Rate Discounts	Not applicable
Patronage Capital	This loan is eligible for Patronage Capital.
Fees	There are no fees charged by CFC for the loan commitment or preparation of loan documents.
Conversions and Prepayments	Prevailing CFC policies will apply for fees associated with interest rate conversions and loan prepayments. Amounts prepaid may not be re-borrowed.

Financial Covenant	Annual DSC of 1.25. Ratio of Total Margins & Equities/Long Term Debt plus Total Margins & Equities to be equal to at least 20%. Subject to adjustment during Reduced Threshold Period.
Conditions Precedent to Closing	Includes, but is not limited to: <ul style="list-style-type: none">▪ Receipt of any application materials, satisfactory completion of CFC's review, and final CFC approval.▪ Completion of mutually agreeable loan documentation that includes terms, covenants, representations, warranties, defaults and remedies and other supporting documentation typical of this type of financing.▪ Compliance with any other applicable Federal or state laws and regulations.
Condition Precedent to Loan Advance	A Funds Requisition Statement must be provided by the Borrower at time of advance, in form and substance acceptable to CFC.

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EXHIBIT 2

Non-Binding Summary of Terms and Conditions

October 16, 2017

This Non-Binding Summary of Terms and Conditions (this "**Summary**") is being presented to **Kauai Island Utility Cooperative** (the "**Company**") by **CoBank, ACB** ("**CoBank**") for information and discussion purposes only. This Summary is neither a commitment nor an offer to extend credit and does not create any obligation on the part of CoBank. This Summary is intended to provide a summary of the primary terms and conditions of the proposed transaction between CoBank and the Company; however, this Summary does not contain all of the terms and conditions applicable to a credit facility provided by CoBank and ultimately contained in any loan documentation. CoBank's decision to extend credit to the Company is contingent upon completion to CoBank's satisfaction of all necessary due diligence, receipt of internal credit approvals, and the preparation of final documentation in form and substance satisfactory to CoBank. All figures, terms, and conditions are subject to change at any time. A commitment by CoBank will exist only if a formal, written commitment letter or definitive loan documents are prepared and executed by CoBank and the Company, and not otherwise. This Summary is strictly confidential and may not be released to or discussed with any third party without the prior written consent of CoBank.

A. PARTIES

Borrower: Kauai Island Utility Cooperative

Lender: CoBank, ACB

B. CREDIT FACILITY

Type and Amount: Up to \$95,115,000 in Term Loans (the "**Term Loans**")

Reduction of Commitment: The maximum aggregate principal amount that may be outstanding at any one time may not exceed \$95,115,000 less the aggregate principal amount borrowed from other lenders for the same Purpose.

Purpose: To finance capital expenditures under the 2016-2019 Construction Work Plan that are not financed by the Rural Utilities Service.

Closing Dates: Shall be the date(s) of execution and delivery of definitive loan documents and satisfaction or waiver of all conditions precedent to the Term Loans.

Availability: The funds shall be made available via term loans through fiscal year end 2022. Repayments and prepayments of the Term Loans may not be reborrowed.

Maturity Date: Up to 30 years after loan advances.



Kauai Island Utility Cooperative

C. CREDIT FACILITY TERMS

Amortization: Consecutive, monthly installments of principal, payable on the 20th day of each month with the first installment due on the first full month after a Term Loan advance, and the last installment due on the Term Loan Maturity Date. The amount of each installment shall be the same principal amount that would be required to be repaid if the loan(s) were scheduled to be repaid in level payments of principal and interest and such schedule was calculated utilizing the rate of interest applicable at the time of amortization

Interest Pricing: The Company will pay interest on the outstanding principal balance of the Term Loans in accordance with one or more of the following interest rate options, as selected by the Company.

Weekly Quoted Variable Rate. At a rate per annum equal at all times to the rate of interest established by CoBank on the first business day of each week. The rate established by CoBank shall be effective until the first business day of the next week. Each change in the rate shall be applicable to all balances subject to this option and information about the then current rate shall be made available upon telephonic request.

Quoted Rate Option. At a fixed rate per annum to be quoted by CoBank in its sole discretion in each instance. Under this option, rates may be fixed on such balances and for such periods, as may be agreeable to CoBank in its sole discretion in each instance, provided that (1) such interest period shall not exceed the Maturity Date; (2) the minimum fixed period shall be one year; (3) amounts may be fixed in increments of \$100,000.00 or multiples thereof; and (4) the maximum number of fixes in place at any one time shall be ten.

Attached to this term sheet is an indicative rate sheet as of October 16, 2017. It provides both patronage and non-patronage interest rate options based on a 30 year loan that is amortized with level monthly payments of principal and interest

Interest Payments: Interest shall be calculated on the actual number of days each advance is outstanding on the basis of a year consisting of 360 days and shall be payable monthly in arrears by the 20th day of the following month.

Origination Fee: None

Security: The Company's obligations under the Term Loans shall be secured by a statutory first lien on all equity that the Company may now own or hereafter acquire or be allocated in CoBank. Furthermore, the following collateral will be pledged to secure the Term Loans:

The Company's obligations under the Term Loans shall be secured by a first priority lien (subject only to exceptions approved in writing by CoBank) and shared pro rata with RUS and CFC on all real and personal property of the Company, whether now existing or hereafter acquired.



Kauai Island Utility Cooperative**Prepayments:**

Any prepayment of any portion of the Term Loans accruing interest pursuant to any fixed rate option prior to the last day of the applicable interest period will be subject to a surcharge equal to the greater of (a) the sum of: (i) the present value of any funding losses sustained by CoBank as a result of such prepayment, plus (ii) a per annum yield of .5% of the amount repaid for the period such amount was scheduled to have been outstanding at such fixed rate, or (b) \$300.

D. CREDIT DOCUMENTATION**Reporting Covenants:**

The Company shall provide: copies of annual consolidated audited financial statements of the Company, prepared in accordance with GAAP and accompanied by an unqualified opinion of an independent certified public accountant acceptable to CoBank, within 120 days of the Company's fiscal year end; copies of quarterly unaudited, financial statements of the Company within 60 days of the end of each fiscal or calendar quarter; prompt notice of an event of default, the commencement of any litigation or any change in the organizational documents of the Company.

Financial Covenants:

- Debt service coverage ratio of no less than 1.35x, measured annually as the average of the highest two annual ratios from the past three fiscal years.
- Equity to assets of no less than 20%, measured quarterly.
- If the proposed indenture is approved and executed, the Financial Covenants may be modified to be consistent with those included in the indenture.

**Expenses and
Indemnification:**

The Company will pay all out-of-pocket costs and expenses of CoBank related to the negotiation, drafting, execution and administration of all loans. Typical expenses include without limitation due diligence expenses, legal fees and expenses, filing fees, lien search fees, appraisal fees, mortgage fees, title insurance and collateral inspection fees. The foregoing fees and expenses shall be due and payable regardless of whether the loans described herein close.

The Company will pay, and hold CoBank and its officers, directors, employees, agents, and attorneys (the "**Indemnitees**") harmless from and against, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, and claims of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Indemnitees as a result of its being a party to the credit agreement, except with respect to liabilities arising from the gross negligence or willful misconduct of that Indemnatee as determined by a final non appealable judgment of a court of competent jurisdiction.



Kauai Island Utility Cooperative

**Governing Law;
Jurisdiction Waiver of
Jury Trial:**

The loan documents will be governed by and construed in accordance with the laws of the State of Colorado. The Company will submit to the nonexclusive jurisdiction and venue of the federal and state courts of the State of Colorado and will waive any rights to a trial by jury in respect of any litigation arising out of or in connection with this financing.

Patronage:

At the sole discretion of CoBank's Board of Directors, each year eligible customers may qualify under CoBank's patronage plan for patronage certificates and distributions. CoBank reserves the right to sell, assign and/or participate credit facilities discussed hereunder on a non-patronage basis.



Kauai Island Utility Cooperative

CoBank Rates as of: 10/16/17
Kauai Island Utility Cooperative
Assumes Level Principal and Interest Payments on a 30 year term loan

<u>Term</u>	Patronage Option <u>Stated Rate</u>	Non-Patronage Option <u>Stated Rate</u>
Variable	██████████	██████████
5	██████████	██████████
10	██████████	██████████
15	██████████	██████████
20	██████████	██████████
30	██████████	██████████



EXHIBIT 3



United States Department of Agriculture
Rural Development

JUN 13 2017

Mr. Allan Smith
Chairman
Kauai Island Utility Cooperative
4463 Pahee Street Suite No. 1
Lihue, Hawaii 96766-2000

Dear Mr. Smith:

We are pleased to advise you that the Rural Utilities Service (RUS) has approved the request by Kauai Island Utility Cooperative (KIUC) for an accommodation of its mortgage lien of up to \$95,115,000 to permit KIUC to obtain a loan guarantee from either CoBank, ACB (CoBank), or the National Rural Utilities Cooperative Finance Corporation (CFC). This approval permits the CoBank or the CFC loan guarantee to be secured under the terms of the previously executed Restated Mortgage and Security Agreement executed by and among the Government, KIUC and CFC.

RUS has certified that the loan proceeds guaranteed by either CoBank or CFC will be used to complete the construction of eligible facilities in accordance with 7 CFR 1717.852 *Financing Purposes*.

The mortgage and related documents will be forwarded in the near future. Upon receipt of these documents, please execute and return to us in accordance with the instructions. If you have any questions, please contact Constance Urdal, Chief, Financial Operations Branch, at 202-260-9013.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher A. McLean". The signature is fluid and cursive, with a large initial "C" and "M".

CHRISTOPHER A. McLEAN
Acting Administrator
Rural Utilities Service - Electric Program

cc: Mr. David J. Bissell, President & CEO
Kauai Island Utility Cooperative

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EXHIBIT 4



**National Rural Utilities
Cooperative Finance Corporation**

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Dulles, Virginia 20166
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Schedule A

The below table represents indicative interest rate quotes as of October 16, 2017. The below interest rates are not eligible for any interest rate discounts but will receive patronage capital. CFC's interest rates are subject to change daily.

Term (Yrs)	Rate
5	
10	
15	
20	
30	



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Schedule B

The below table represents indicative interest rate quotes as of October 16, 2017. The below interest rates are not eligible for any interest rate discounts or patronage capital. CFC's interest rates are subject to change daily.

Term (Yrs)	Rate
5	
10	
15	
20	
30	

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EXHIBIT 5



CoBank Rates as of: 10/16/17
Kauai Island Utility Cooperative
Assumes Level Principal and Interest Payments on a 30 year term loan

<u>Term</u>	<u>Patronage Option</u> <u>Stated Rate</u>	<u>Non-Patronage Option</u> <u>Stated Rate</u>
Variable	██████████	██████████
5	██████████	██████████
10	██████████	██████████
15	██████████	██████████
20	██████████	██████████
30	██████████	██████████


VERIFICATION

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

LAUREN M. IMADA, being first duly sworn, deposes and says: That such person is the attorney of record for Kauai Island Utility Cooperative, Applicant in the above proceeding, that the officers of Kauai Island Utility Cooperative are not present within the City and County of Honolulu; that such person has read the foregoing Application, and knows the contents thereof; and that the same are true of such person's own knowledge except as to those matters stated on information and belief, and that as to those matters such person believes them to be true.

Lauren M. Imada

This 1-page Verification to Kauai Island Utility Cooperative's Application dated October 24, 2017, was subscribed and sworn to before me on October 24, 2017, in the First Circuit, State of Hawaii by Lauren M. Imada.

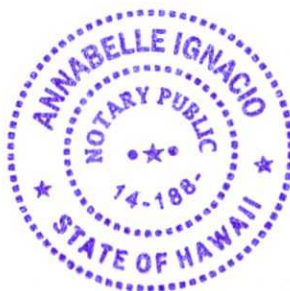


Notary Public, State of Hawaii

ANNABELLE IGNACIO

Printed Name of Notary Public

My commission expires: June 8, 2018



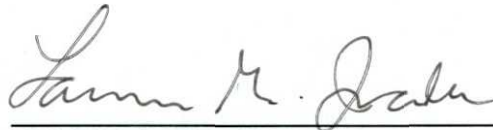
CERTIFICATE OF SERVICE

I (we) hereby certify that copies of the foregoing document were duly served on the following party, by having said copies delivered as set forth below:

DEAN NISHINA
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
335 Merchant Street
Room 326
Honolulu, Hawaii 96813

3 COPIES
VIA HAND DELIVERY

DATED: Honolulu, Hawaii, October 24, 2017.

A handwritten signature in cursive script, appearing to read "Lauren M. Imada", is written over a horizontal line.

KENT D. MORIHARA
KRIS N. NAKAGAWA
LAUREN M. IMADA

Morihara Lau & Fong LLP
Attorneys for
KAUAI ISLAND UTILITY COOPERATIVE